

REMARKS

The Examiner has required an election in the present application between:

Group I, claims 1-4 directed to a method of producing a macrolide compound;

Group II, claim 5, directed to an organism *Streptomyces* sp. AB-1704;

Group III, claim 6, directed to an organism *Mortierella* sp. F-1529; and

Group IV, claim 7, directed to an organism Microsporaceae AB-1896.

With respect to the Election of Species Requirement, Applicants elect the *Streptomyces* of claim 3. Claims 1 and 3 read upon the elected species.

For the purpose of examination of the present application, Applicants elect Group I, claims 1-4, directed to a method of producing a macrolide compound. This requirement is respectfully traversed. Reconsideration and withdrawal of the requirement for restriction are respectfully requested.

In view of the election of the *Streptomyces* of claim 3, it is clear that there is absolutely no undue burden on the Examiner in considering the invention of Group II, directed to the *Streptomyces* sp AB-1704. Indeed, how can the Examiner require Applicants to elect a species to begin a search and then state that the species is directed to a different invention? Clearly, there is no undue burden in examining Groups I and II at the same time.

Further, upon allowance of the elected invention, the Examiner should extend the search to the remaining organisms listed in the restriction requirement as such an examination will not be an undue burden on the Examiner.

Finally, the Examiner's reliance upon US 7,026,352 [the '352 patent] is misplaced. Simply stated, this publication is not available for the Examiner to utilize to support his position.

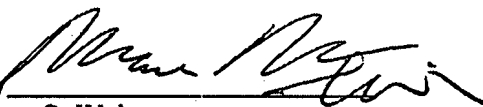
The '352 patent is not a reference [e.g. 102(a/b)] as it was published on April 11, 2006, which is many years after the filing date of the present application. The '352 patent is also not available as of its filing date [eg. 102(e)] since the WIPO publication was not in English. However, the corresponding WIPO publication was published on August 8, 2002 and is thus available to the Examiner. The Examiner is invited to clarify the record and to list the corresponding WIPO publication on an updated PTO-892 while at the same time removing the '352 patent.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Marc S. Weiner, Registration No. 32,181 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: November 5, 2007

Respectfully submitted,

By 

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Search result: 1 of 1

(WO/2002/060890) NOVEL PHYSIOLOGICALLY ACTIVE SUBSTANCES

Biblio. Data Description Claims National Phase Notices Documents

Latest bibliographic data on file with the International Bureau

Publication Number: WO/2002/060890 International Application No.: PCT/JP2002/000848
Publication Date: 08.08.2002 International Filing Date: 01.02.2002
Chapter 2 Demand Filed: 07.08.2002

Int. Class.: A61K 31/335 (2006.01), A61K 31/336 (2006.01), A61K 31/4025 (2006.01), A61K 31/4427 (2006.01), A61K 31/4523 (2006.01), A61K 31/455 (2006.01), A61K 31/496 (2006.01), A61K 31/5377 (2006.01), A61K 31/74 (2006.01), C07D 313/00 (2006.01), C07D 405/14 (2006.01), C07D 407/06 (2006.01), C07D 407/14 (2006.01), C07D 493/04 (2006.01), C07D 493/08 (2006.01), C12P 17/02 (2006.01)

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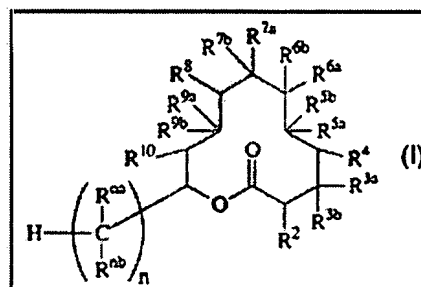
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Priority Data: 2001-25458 01.02.2001 JP

Title: NOVEL PHYSIOLOGICALLY ACTIVE SUBSTANCES

Abstract: Novel physiologically active substances having an antitumor activity, a process for producing the same and medicinal use thereof are provided. Namely, 12-membered ring macrolide compounds represented by the following general formula which are obtained by culture media of *Streptomyces* sp. Mer-11107 or its variants, pharmacologically acceptable salts thereof or hydrates of the same and a process for producing the same.



Designated States: AE, AG, AL, AM, AT, AU, AZ, BA, BB, BG, BR, BY, BZ, CA, CH, CN, CO, CR, CU, CZ, DE, DK, DM, DZ, EC, EE, ES, FI, GB, GD, GE, GH, GM, HR, HU, ID, IL, IN, IS, JP, KE, KG, KP, KR, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MK, MN, MW, MX, MZ, NO, NZ, OM, PH, PL, PT, RO, RU, SD, SE, SG, SI, SK, SL, TJ, TM, TN, TR, TT, TZ, UA, UG, US, UZ, VN, YU, ZA, ZM, ZW.
African Regional Intellectual Property Org. (ARIPO) (GH, GM, KE, LS, MW, MZ, SD, SL, SZ, TZ, UG, ZM, ZW)
Eurasian Patent Organization (EAPO) (AM, AZ, BY, KG, KZ, MD, RU, TJ, TM)
European Patent Office (EPO) (AT, BE, CH, CY, DE, DK, ES, FI, FR, GB, GR, IE, IT, LU, MC, NL, PT, SE, TR)
African Intellectual Property Organization (OAPI) (BF, BJ, CF, CG, CI, CM, GA, GN, GQ, GW, ML, MR, NE, SN, TD, TG).

Publication Language: Japanese (JA)

Filing Language: Japanese (JA)